



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 10, 1997

Mr. Edward W. Dunbar  
Law Offices of Dunbar, Barill,  
Crowley & Hegeman, L.L.P.  
4726 Transmountain Drive  
El Paso, Texas 79924

OR97-2482

Dear Mr. Dunbar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 109985.

The El Paso Community College District (the "college"), which you represent, received a request for "copies of the documents containing and/or copies of the reasons [the requestor's] contract with the College was not extended." You have submitted the information which you contend is responsive to the request. You contend the submitted documents constitute student records, and thus excepted from required public disclosure pursuant to sections 552.026 and 552.114, as "education records," as defined in the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g(a)(4)(A). You request our decision whether the requested information is excepted from disclosure pursuant to sections 552.026 and 552.114 of the Government Code. We have considered the arguments you have raised and have reviewed the submitted information.

You claim that the responsive information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 excepts from disclosure educational records unless released in conformity with FERPA.<sup>1</sup>

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those

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<sup>1</sup>The term "student record" in section 552.114 has been generally construed to be the equivalent of "education record." See generally Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990), 477 (1987), 332 (1982).

exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents to any individual, agency, or organization. . . .

20 U.S.C. § 1232g(b)(1). "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

*Id.* § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) at 14-15, 447 (1986). The college has made a determination that the responsive documents constitute student records, which are excepted from disclosure under FERPA. We agree the submitted documents contain information that is protected from disclosure pursuant to sections 552.026 and 552.114 and FERPA.<sup>2</sup>

Information must be withheld from disclosure if it serves to identify or tends to identify a student. Open Records Decision Nos. 332 (1982) at 3, 294 (1981). However, information must be withheld under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). In Open Records Decision No. 224 (1979) at 2, this office concluded that the release of a student's handwritten comments could reveal the student's identity through the handwriting, style of expression, or particular incidents related through the comments. After reviewing the records, we conclude that all information that would personally identify a particular student must be redacted. Based on the submitted records, we conclude that most of the submitted information must be withheld. Accordingly, we have marked the information in the submitted records that may not be disclosed except in accordance with FERPA.<sup>3</sup>

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<sup>2</sup>If the students whose records are at issue are 18 years of age or older or attend a postsecondary educational institution, the students must give written consent to allow the release of education records. 20 U.S.C. § 1232g(d).

<sup>3</sup>If you have further questions as to the applicability of FERPA to the information at issue, you may consult with the United States Department of Education Family Policy and Regulations Office. *See* Open Records Decision No. 634 (1995) at 4 n.6, 8 n.9. *See* Gov't Code § 552.352 (section 552.352 imposes criminal penalties for release of confidential information).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 109985

Enclosures: Marked documents

cc: Ms. Andrea Crease  
6201 Escondido — 2C  
El Paso, Texas 79912-1902  
(w/o enclosures)